

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
and)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the)	
Telecommunications Act of 1996)	

OPPOSITION OF RHYTHMS NETCONNECTIONS INC.

Rhythms NetConnections Inc. ("Rhythms") hereby submits its opposition to the petitions for clarification and reconsideration of the *Line Sharing Order*¹ filed by Bell Atlantic and BellSouth. The Commission should deny these petitions because neither Bell Atlantic nor BellSouth raises any new evidence or issues that the Commission has not already fully considered and resolved.

The Commission's *Line Sharing Order* was issued following careful consideration of an extensive record compiled over an eight-month period. Both Bell Atlantic and BellSouth actively participated in that proceeding, and raised the same arguments there that they raise once again in their petitions. Therefore, it is neither necessary nor appropriate to reopen the record to provide the incumbent LECs with yet another a forum to rehash arguments that the Commission has already considered and soundly rejected. Thus, the Commission should promptly issue an order, pursuant to Section 1.429(i) of the rules (47 C.F.R. §1.429(i)), denying both petitions in their entirety.

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, FCC 99-355 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

I. THE COMMISSION SHOULD REAFFIRM THE REQUIREMENT THAT ILECS DEMONSTRATE THAT CONDITIONING OF A SPECIFIC LOOP WOULD CAUSE “SIGNIFICANT DEGRADATION”

In the *Line Sharing Order*, the Commission found that “very long length loops are now compatible with certain xDSL transmission technologies”² and ruled that incumbent LECs must “condition loops of *any* length for which competing carriers have requested line sharing, unless conditioning of that loop will significantly degrade the incumbent’s voice service as described below.”³ To address any potential degradation of the voiceband service, the Commission adopted a requirement that “the incumbent refusing a competitive carrier’s request to condition a loop make an affirmative showing to the relevant state commission that conditioning the specific loop in question will significantly degrade voiceband services.”⁴ Bell Atlantic seeks reconsideration of this requirement on the basis that it is “wholly unnecessary and should be eliminated.”⁵

Bell Atlantic has clearly failed to proffer any evidence or present arguments sufficient to warrant reconsideration on this issue. It has presented no evidence that the Commission erred in concluding that advances in xDSL technology allow for line sharing on very long loops, which underlies its requirement that incumbent LECs condition loops of any length for which competing carriers have requested line sharing. Bell Atlantic has likewise presented no basis for reconsideration of the Commission’s decision to require an incumbent LEC to demonstrate to the relevant state commission that conditioning the specific loop in question will significantly degrade voiceband services. Accordingly, Bell Atlantic’s request should be denied.

² *Line Sharing Order* at ¶ 84.

³ *Id.* (emphasis supplied).

⁴ *Id.* at ¶ 85.

⁵ Bell Atlantic Petition at 6.

II. BELLSOUTH'S REQUEST FOR ELIMINATION OF THE "SUCCESSFUL DEPLOYMENT CRITERION" SHOULD BE DENIED

In the *Line Sharing Order*, the Commission reaffirmed the decision, reached in the *Advanced Services First Report and Order*,⁶ that loop technologies should be presumed acceptable for deployment under any of several circumstances, including a demonstration that the loop technology: "(1) complies with existing industry standards; (2) is approved by an industry standards body, the Commission, or any state commission; or (3) has been successfully deployed by any carrier without 'significantly degrading' the performance of other services."⁷ BellSouth requests that the Commission eliminate the third criterion (the "successful deployment criterion") and limit the state commission alternative so that it includes only the state commission *in the state in which the carrier wishes to deploy the technology*.⁸

BellSouth asserts that, due to differences in network architectures between incumbent LECs, there will be "situations where a new technology may not degrade the existing services of one incumbent LEC in a particular state but will degrade another incumbent LEC's existing services in another state."⁹ BellSouth contends that "short of requiring a new technology to be approved by a standards body, the technology should at least be approved by the state commission in the state the carrier wishes to deploy the technology."¹⁰ BellSouth asserts that the determination of which new technologies are deployable in a given state should be left to each state commission,¹¹ and that no state commission should be "forced to accept new technologies

⁶ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking (FCC 99-48) (rel. March 31, 1999) (*"Advanced Services First Report and Order"* and *"Further NPRM,"* respectively).

⁷ *Line Sharing Order* at ¶ 195.

⁸ BellSouth Petition at 4.

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

¹¹ *Id.*

that have been approved by other state commissions.”¹² BellSouth also asserts that once a CLEC has obtained approval to deploy a new technology on a single LEC network in any state, the remedies available to other incumbent LECs are “painfully inadequate.”¹³

BellSouth’s petition, insofar as it relates to the Commission’s established criteria for new technology deployment, is grossly untimely. The Commission adopted those criteria in the *Advanced Services First Report and Order*, released on March 31, 1999, and the *Line Sharing Order* merely reaffirmed those criteria without modification. BellSouth should have filed any petition for reconsideration of the adoption of those criteria within the thirty-day period following the publication of a summary of the *Advanced Services First Report and Order* in the *Federal Register*, as specified in the Commission’s rules. BellSouth failed to file a timely petition for reconsideration of the *Advanced Services First Report and Order*, and that failure time-bars its current request.

In addition to being untimely, BellSouth’s petition is wholly repetitive of its comments. The Commission has already adequately addressed each of BellSouth’s concerns in the *Line Sharing Order* and should not reconsider those same issues now. First, the Commission expressly considered and rejected the argument of BellSouth and others that the successful deployment criterion “will lead to interference in the network, due to differing mixes of deployed technology in local networks.”¹⁴ Second, the Commission reaffirmed requirements that competitive LECs provide to incumbent LECs information on the type of technology they propose to deploy (as set forth in §51.231(b)), to allay “the concerns of some commenters over risks of interference to the network from the deployment of a technology that was successfully

¹² *Id.*

¹³ *Id.*

¹⁴ *Line Sharing Order* at ¶ 198 (citing BellSouth Reply Comments at 28-30).

deployed elsewhere.”¹⁵ This requirement provides ILECs with advance notice of the type of technology proposed to be deployed, which should enable them to evaluate the potential for interference in the context of their own particular network architecture.

Finally, under the Commission’s rules, the presumptions of acceptability for deployment are not irrebuttable, and BellSouth is not obligated to wait until “significant damage [has] occurred to [its] customers’ services”¹⁶ before seeking relief from a state commission if a technology proposed for deployment poses a real interference threat.¹⁷ Thus, the Commission’s “successful deployment criterion” and the measures the Commission has adopted for resolution of interference disputes are fully adequate to address any legitimate ILEC concern that the deployment of new technologies successfully deployed elsewhere will adversely affect their existing services.

The Commission has already addressed each of the concerns raised in BellSouth’s petition. The Commission adopted the “successful deployment criterion” because it is “particularly useful for assisting the deployment of new technologies without subjecting them to delays often encountered with industry standards-setting fora.”¹⁸ For these reasons, the Commission should deny BellSouth’s request for reconsideration of this issue.

III. THE COMMISSION SHOULD REJECT BELL ATLANTIC’S REQUEST TO DELAY LINE-SHARING IMPLEMENTATION BEYOND 180 DAYS

Bell Atlantic asks the Commission to “clarify” that nothing in the *Line Sharing Order* requires that line sharing be fully implemented within 180 days “if the industry determines, through a collaborative process” that an efficient deployment schedule “regardless of whether all

¹⁵ *Id.* at ¶ 198.

¹⁶ BellSouth Petition at 3.

¹⁷ “The LEC...will be able to rebut the presumption of acceptability before a state commission if the technology proposed for deployment poses a real interference threat in a certain area.” *Line Sharing Order* ¶ 199.

¹⁸ *Line Sharing Order* at ¶ 198.

steps in that process will be completed by the Commission's 180 day targeted date.”¹⁹ Bell Atlantic suggests that such leeway is necessary because collaborative efforts on line sharing have begun “to unravel the operational complexities associated with provisioning line sharing,”²⁰ which were purportedly “grossly underestimated” by the Commission.²¹

Bell Atlantic asserts (without any explanation or supporting facts) that there were hidden operational issues not considered by the Commission that are just now being “unravel[ed].”²² This is certainly not the case. The operational issues involved in implementing line sharing were briefed extensively in this proceeding. The Commission thoroughly evaluated the scope and depth of the operational issues to be addressed in the process of implementing line sharing.²³ Based upon this evaluation, the Commission reached a determination that a company acting in good faith would be able to work through these operational issues and provide competitors access to line sharing within 180 days of the release of the order.²⁴ To now suggest, without any evidentiary support, that somehow the Commission grossly underestimated the time needed to implement line sharing is not only inaccurate, but simply disingenuous.

The Commission should reject Bell Atlantic's request for “clarification” and adhere to the original line-sharing deployment schedule. The Commission has already determined that any delay in line sharing would have a “significant adverse impact” on competition and availability of advanced services to consumers.²⁵ Any delay would also further exacerbate competitors' disadvantage due to the long headstart that the ILECs have already given themselves in deploying line sharing.

¹⁹ Bell Atlantic Petition at 2.

²⁰ *Id.* at 7.

²¹ *Id.*

²² *Id.*

²³ *Line Sharing Order* at ¶¶ 69-130.

²⁴ *Id.* at ¶¶ 126, 161, 169-170.

²⁵ *Line Sharing Order* at ¶ 161.

IV. THE COMMISSION SHOULD REAFFIRM COMPETITORS' RIGHT OF ACCESS TO THE ENTIRE LOOP FOR TESTING

Bell Atlantic asks the Commission to “clarify that incumbent carriers need only provide competing access to the higher frequency portion of the loop for testing purposes.”²⁶ Bell Atlantic seeks this clarification because of a purported inconsistency in the Commission’s *Line Sharing Order*. Specifically, Bell Atlantic notes that §51.319(h)(7)(i) only requires incumbents to provide competitors with “physical loop test access points” for loop testing, maintenance and repair, thus implying that only the high-frequency portion of the loop should be available for testing.²⁷ Bell Atlantic claims that this statement is inconsistent with other “language in the Order that potentially could be read to suggest that there may be circumstances where competitive carriers need access to the entire loop for testing purposes.”²⁸

Bell Atlantic’s request for “clarification” should be denied. The Commission’s *Line Sharing Order* clearly recognizes the critical need for competitors to access the whole loop for testing. As the Order indicates, limiting competitors’ access to only the high frequency for testing

precludes the competitive LEC from engaging in certain important types of loop testing that require the competitive LEC to access the loop’s whole frequency range. The ability to perform this type of loop testing is important for installation, maintenance, and repair activities in *both* shared and non-shared line situations.²⁹

The Commission clearly intended that competitors have access to the entire loop for testing purposes. There is no need for the “clarification” requested by Bell Atlantic. The Commission has clearly stated that incumbent LECs are required to provide competitors with access to

²⁶ Bell Atlantic Petition at 3.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Line Sharing Order* at ¶ 113.

“physical loop access test points,” so that competitors can access the entire loop frequency range for the purpose of conducting tests.³⁰

V. THE COMMISSION SHOULD REAFFIRM ITS CONCLUSION THAT STATES MAY ADOPT ANY OF SEVERAL APPROACHES TOWARDS DISPOSITION OF KNOWN DISTURBERS

Bell Atlantic asks the Commission to reconsider its decision to allow state commissions to order incumbent LECs to segregate or sunset technologies that are known disturbers, such as AMI T1.³¹ In addition, Bell Atlantic argues that the Commission’s decision on state ordered segregation or sunset of known disturbers is inconsistent with the Commission’s established concept of “first-in-time.”³²

In the *Line Sharing Order*, the Commission fully reviewed the comments that addressed the disposition of known disturbers, and found that commenters were fairly evenly divided between those (including Rhythms) supporting a three-year sunset period, those advocating that disposition be handled by the states, and those asserting that disposition should be left to market forces or directed by incumbent LECs.³³ Upon consideration of the entire record, the Commission concluded that the states should determine disposition of known interfering technologies.³⁴ The Commission declined to leave the disposition of known disturbers to incumbent LECs. It concluded that “states are better equipped than incumbent LECs to take an objective view of the disposition of known disturbers, because of the vested interest that incumbent LECs have in their own substantial base of known disturbers such as analog T1.”³⁵

³⁰ Bell Atlantic’s alternative request that the Commission reconsider its decision to provide competitors with access to the entire loop for test purposes should also be denied. The Commission fully considered each of the issues raised by Bell Atlantic and the other incumbent LECs in the *Line Sharing Order*, and Bell Atlantic has failed to demonstrate that reconsideration is appropriate.

³¹ Bell Atlantic Petition at 8.

³² *Id.* at 9.

³³ *Line Sharing Order* at ¶ 218.

³⁴ *Id.*

³⁵ *Id.* at ¶ 219.

Thus, the Commission has already considered and rejected the ILECs' argument that the scheduling of disposition of known disturbers should be left to the ILECs themselves, and Bell Atlantic has failed to provide a sufficient basis for the Commission to revisit that determination.

Bell Atlantic's assertion that the Commission's decision is inconsistent with the "first-in-time" concept is equally without merit. The Commission expressly "incorporate[d] elements of a 'first-in-time' concept" in its line sharing policies and rules,³⁶ while carving out an "exception" to ensure that AMI T1 and other older and "noisier" technologies do not forever preclude deployment of newer, more efficient and non-interfering technologies.³⁷ The Commission amply explained and justified the basis for adopting a limited exception to the "first-in-time" principle: "any criteria that favor incumbent LEC services in a manner that automatically trumps, without further consideration, innovative services offered by new entrants is neither consistent with section 706 of the 1996 Act nor with the Commission's goals as set out in the *Advanced Services First Report and Order*."³⁸ No justification has been advanced for reconsideration of this decision.

³⁶ *Id.* at ¶ 211.

³⁷ *Id.* at ¶ 210.

³⁸ *Id.*

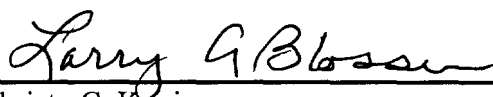
CONCLUSION

For the reasons set forth herein, the petitions for clarification or reconsideration filed by Bell Atlantic and BellSouth should be denied.

Respectfully submitted,

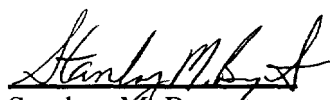
Rhythms NetConnections Inc.

Jeffrey Blumenfeld
Vice President and General Counsel
Rhythms NetConnections Inc
6933 South Revere Parkway
Englewood, Colorado 80112
303.476.4200
303.476.4201 facsimile
jeffb@rhythms.net


By: Christy C. Kunin
Larry A. Blosser
Lisa N. Anderson
Blumenfeld & Cohen – Technology Law Group
1625 Massachusetts Ave., N.W. Suite 300
Washington, D.C. 20036
202.955.6300
202.955.6460 facsimile
christy@technologylaw.com

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I, Stanley M. Bryant, do hereby certify that on this 22nd day of March, 2000, that I have served a copy of the foregoing document via * messenger and U.S. Mail, postage pre-paid, to the following:


Stanley M. Bryant

*Chairman William E. Kennard
Federal Communications Commission
445 12th Street, S.W., Room 8B-201
Washington, D.C. 20554

*Commissioner Susan Ness
Federal Communications Commission
445 12th Street, S.W., Room 8B-115
Washington, D.C. 20554

*Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W., Room 8A-302
Washington, D.C. 20554

*Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W., Room 8C-302
Washington, D.C. 20554

*Commissioner Michael Powell
Federal Communications Commission
445 12th Street, S.W., Room 8A-204
Washington, D.C. 20554

*Dorothy Attwood
Legal Advisor, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 8B-201
Washington, D.C. 20554

*Linda Kinney
Assistant Bureau Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 8B-115
Washington, D.C. 20554

*Rebecca Begnon
Legal Advisor, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 8A-302
Washington, D.C. 20554

*Sarah Whitesell
Legal Advisor, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 8C-302
Washington, D.C. 20554

*Kyle Dixon
Legal Advisor, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 8A-204
Washington, D.C. 20554

*Jordan Goldstein
Legal Advisor, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 8B-115
Washington, D.C. 20554

*Janice M. Myles
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5C-327
Washington, D.C. 20554

Richard S. Whitt
Cristin L. Flynn
MCI WorldCom, Inc.
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Donna M. Epps
Bell Atlantic
1320 North Courthouse Road
Eighth Floor
Arlington, VA 22201

Marot Smiley Humphrrey
Koteen & Naftalin, LLP
1150 Connecticut Ave., N.W.
Washington, D.C. 20036

James L. Casserly
Michael Pryor
James J. Valentino
Mintz, Levin, Cohn, Ferres,
Glovsky & Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

*Robert Atkinson
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5C-356
Washington, D.C. 20554

*ITS
1231 20th Street, N.W.
Washington, D.C. 20036

Robert Sutherland
Stephen L. Earnest
BellSouth Corporation
1155 Peachtree Street, N.E., Suite 1700
Atlanta, GA 30306-3610

L. Marie Guillory
Daniel Mitchell
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203-1801

Mark C. Rosenblum
Stephen C. Garavito
Richard H. Rubin
Room 1131M1
295 N. Maple Avenue
Basking Ridge, NJ 07920